Selected Issues in State/Local Funding of Courts and Corrections

Fiscal Modernization Study Commission

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North Carolina Courts

North Carolina's current court system is the result of a sustained court reform effort that began in the mid-1950's and ended in 1970 with the last phase-in of the district court system. The following principles were used to shape that system:

1. Uniformity (salaries, procedures, powers of officials, costs, jurisdiction, etc.)
2. Unification of all local courts into a single General Court of Justice
3. State funding of personnel, equipment and operations and local funding of facilities
4. Elections as primary method to determine leaders

The goal of "uniformity" has an impact on the allocation of financial responsibility to state and local governments to pay for the court system. Providing operational resources from a central state source (the Administrative Office of the Courts) was a principal means of maintaining the uniformity that was a driving force in the court reform movement. Recent pressures to depart from that central state funding model have led to the use of local funds in various aspects of the court's operations, including providing computer equipment and personnel. To a lesser extent, the state has funded local courthouse construction or maintenance, which had previously been a local responsibility. The first may reflect a new understanding of the definition of a "uniform" court system, and both may reflect a blurring of the lines between the state and local government's roles in financing the courts.

NC Constitution, Art. IV, Sec. 20; GS 7A-300. (State pays operating costs)
GS 7A-302 (Local government—primarily county—provides facilities)

Issues in State-Local Responsibility to fund the courts

1. Facilities issues—strain on local tax base to fund capital costs; inequity/inadequacy in facilities; state financing of selected facilities; facilities for multi-county districts; costs for security; effects on local budgets by state budget decisions and schedules
2. Computer issues—funding for modernization; interfaces with local justice systems (police/jails)

3. Locally-paid court personnel—equity among rich/poor counties; permanence of funding; local specialty courts; impact on state funding
4. Court costs and fees—uniformity; adequacy to support local activities; control over use of money; role in financing programs

Allocation of Financial Responsibility for the Court System

All operating expenses of the Judicial Department are borne by the state (G.S. Ch. 7A, Subchapter VI). These include salaries and travel expenses of all judges, district attorneys, clerks and their assistants, magistrates, court reporters, public defenders, and guardians *ad litem*. Also included are the books, supplies, records, and equipment in all these officials' offices, and the fees of all jurors and witnesses for whom the government is responsible. This is a direct result of court reform efforts in the 1950s and 1960s. Before court reform, salaries and other operating expenses for most trial court officials (clerks, lower court judges, justices of the peace, and so forth) were the responsibility of local governments. Correspondingly, most fees collected went to local governments or directly to court officials as their compensation. The current arrangement reflects the fundamental policy decisions made during this court reform effort that all court officials should have the same duties and be paid the same salaries. As a result, citizens should receive roughly the same services from the courts wherever they live. That rigid commitment to uniformity, reflected in an original policy of requiring all operational funding to come from the state, has, since the late 1990s, begun to erode a bit. Acting on the request of local court and local government officials, the legislature authorized local governments to supplement the operations of the courts serving their counties or cities, and in some instances they have chosen to do so by funding temporary positions in the district attorney's, public defender's, or clerk's offices. But that is still the exception.

In the court reform effort of the 1960s, the primary responsibilities counties (and a few cities) retained for court operations was to provide "adequate" physical facilities for the courts. That duty has not changed since court reform. The most obvious of such facilities are courtrooms, but this duty also extends to the need for office and storage facilities, parking, and related spaces for judges, the clerk of superior court and the clerk's staff, district attorneys, and magistrates. In addition, most of the ancillary personnel listed in this chapter are entitled to county office space, either by specific statute or because they are part of the court system. The obligation to provide facilities includes the responsibility for furniture (but not equipment) and the cleaning and maintenance of the courthouse.

Questions often arise about whether particular expenses should be covered by the county or by the state. Often the issue is whether a particular item is an operating expense or part of a facility. What is the cable to connect the state's mainframe computer to the courthouse? (probably equipment). What about cable inside the courthouse? (generally thought to be part of the courthouse infrastructure, and thus facilities). Is a sound system for use in courtrooms an operating expense or part of the facility? (an infrastructure item, and thus part of the facility). What about court security equipment like metal detectors? (security is the sheriff's responsibility, and if the equipment is permanent, is part of the infrastructure). Sometimes the line is clear—furniture, drapes, and fixtures are part of the facility, and computers and specialized court equipment are operating expenses. But often

the distinction is not clear, and is usually resolved through negotiation.

Sometimes the issue is a different one—is the facility or the furnishing of the facility "adequate"? In such cases, the initial determination is made by the county when it allocates and maintains the space allocated to the courts, pursuant to its general authority to control the use of its property. When court officials or users question the adequacy, they almost always do so informally, and usually the issue can be settled there. But if court officials or users of the courts believe that the county's decision about allocation of facilities does not result in "adequate" facilities, the North Carolina Supreme Court has indicated that it is possible for the county to be sued to force it to provide adequate facilities. If that litigation results in a decision that a complained-of facility is inadequate, the court may order the county to provide an adequate facility. The county generally has the discretion to decide how to remedy the inadequacy. If it fails to take action, or if its action is found to be inadequate, the court could then hold the appropriate officials in contempt of court, although as of December 2005, no case had ever reached that stage. Negotiated settlements are almost always reached before that stage of litigation results.

If the facility is a municipal district court, the same process described previously for counties would be applicable, but the courts have additional options for dealing with the issue. The statutes authorize the director of the Administrative Office of the Courts to forbid the use of a municipal facility if he or she determines it to be inadequate (G.S. 7A-302). Additionally, a chief district court judge may simply direct that no cases be scheduled in a municipal facility if he or she finds it to be inadequate.

A "facilities fee" is collected in each court case as part of the court costs paid by the litigants. This fee is distributed to the counties (and a proportionate share goes to municipalities for the cases heard in municipally owned district court facilities) and must be spent exclusively for providing, maintaining, and constructing court facilities for court officials and court-related personnel, as well as for some related functions. Court-related personnel are generally thought to be the other employees administratively housed in the Judicial Department, such as family court or drug court personnel, trial court administrators, custody mediation personnel, and so on. Those other related functions, as listed in G.S. 7A-304, include jail and juvenile detention facilities, free parking for jurors, and a law library, including books. Sometimes court officials or others ask for an accounting of the use of the facilities fee, and under the public records law, they are entitled to that information. When the state assumed the costs of operating the trial courts in the 1960s, this fee was preserved as a local government source of revenue to help offset the continuing costs retained by the county for court operations. It is rarely sufficient to cover the entire cost of operating a court facility, and would never support the cost of construction of facilities.

Drennan, James C., "The Courts," Article 36, pp. 14-15 (September 1, 2006), in *Municipal and County Government in North Carolina*, ed. David Lawrence (Chapel Hill, NC: UNC School of Government), sog.unc.edu (accessed November 17, 2006). Draft.

Correctional System—Allocation of Responsibility

1. Responsibility for jails—Local obligation, with state regulation and inspection. GS 153A-216 et.seq.
2. Responsibility for prisons—State obligation. GS 148-4
3. Cost of pretrial detention—Local, subject to transfer to state for safekeeping (local government pays $18.50 per day). GS 148-32.1
4. Cost of post-conviction confinement—State/local mix. State has responsibility for all felons and misdemeanants with sentences over 90 days. For misdemeanants with sentences over 30 days, state pays county $18.50 per day plus most medical costs for the inmate. GS 15A-1352; 148-32.1
5. Cost of state prisoners awaiting transfer—State pays county $40 per day (after 6 days) plus medical costs for state prisoner held in local confinement facility pending transfer to Department of Correction. Length of stay depends on variety of factors, including state prison capacity. GS 148-29
6. Community corrections programs, state—Adult probation and parole
7. Community corrections program, local or nonprofit—Criminal justice partnership or local funding (pretrial release programs, intermediate punishment programs)